


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 061602-5575	
I hereby certify that this correspondence is being deposited with the United States Postal Service via EFS Web addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  On June 8, 2009  Signature   Typed or printed name Kelly Allerston		Application Number 09/990,359	Filed 11/23/2001
		First Named Inventor Miraj Mostafa	
		Art Unit 2169	Examiner WORONKO, Nicholas F.
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor.  <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> attorney or agent of record. Registration number 37,268		/G. Peter Albert, Jr./ Signature  G. Peter Albert Jr. Typed or Printed Name  (858) 847-6735 Telephone Number  June 8, 2009 Date	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of 1 forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Miraj Mostafa  
Title: DATA TRANSMISSION  
Appl. No.: 09/990,359  
Filing Date: 11/23/2001  
Examiner: WORONKO, Nicholas F.  
Art Unit: 2169  
Confirmation Number: 2084

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with the New **Pre-Appeal Brief Conference Pilot Program**, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

**REMARKS**

Claims 1-7, 9-16 and 19-23 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2002/0056123 to Liwerant et al. (hereinafter "Liwerant") in view of U.S. Patent No. 6,738,822 to Fukasawa et al. (hereinafter "Fukasawa") and further in view of alleged Applicant's Acknowledged Prior Art. Applicant respectfully traverses this rejection for at least the following reasons.

As noted in an earlier reply by Applicant, embodiments of the present invention provide for formation and transmission of notification messages in accordance with the multimedia message reception capabilities or user preferences. In accordance with

embodiments of the invention, a network entity may access a database comprising data related to the reception capabilities or preferences of an intended recipient of media content. The network entity then forms a notification message containing information related to the media content in accordance with the reception capabilities or preferences of the intended recipient. Thus, in accordance with embodiments of the present invention, media content is sent to a recipient, and at least components of that content are translated according to recipient preferences, which may be located on a database that is in communication with the MMSC. Accordingly, independent claim 1 recites “accessing, by the network entity, a database comprising recipient data describing at least one of multimedia reception capabilities and multimedia reception preferences for at least one recipient ...” Each of independent claims 11, 12, 13 and 23 recites a similar feature.

The cited references fail to teach or suggest at least this feature of the pending claims. In rejecting the claims, the Examiner cites Liwerant as allegedly disclosing this feature at paragraphs [0051-0053] and Figure 1B. See Office Action dated February 6, 2009, page 3. Applicant respectfully disagrees with the Examiner’s interpretation of the disclosure of Liwerant as applied to the pending claims.

Liwerant relates solely to the options that may be selected by the sender, not the recipient. For example, Liwerant discloses that “additional information can include ... specifications such as resolution and/or image quality desired by the user of sender A’s computer 10.” Liwerant, paragraph [0052] (emphasis added). In accordance with the disclosure of Liwerant, there is no consideration given to the capabilities or preferences of the recipient.

The Examiner argues that Liwerant discloses:

“describing multimedia preferences including the streaming video format that the video segment should be converted into, resolution, transmission bitrate, and video quality, as well as, multimedia preferences regarding the display format of the video segment to be displayed on the user’s (10) computer including the size of the display in pixels or in linear measure, what portion of the screen is to be used, location on the screen, whether the full-screen is to be used, etc.” Office Action dated February 6, 2009, page 3.

The appears to acknowledge that the preferences disclosed in Liwerant relate to the sending device, not the recipient by stating “regarding the display format of the video segment to be displayed on the user’s (10) computer” since the computer 10 in Liwerant is repeatedly referred to as “the user of sender A’s computer 10.” Further, a careful reading of the cited portion of Liwerant clearly discloses that the preferences relate to those specified by the sender. For example, in describing the optional information provided by the user of sender A’s computer, paragraph [0053] of Liwerant discloses:

“[0053] The optional information can also include information indicating the streaming video format that the video segment should be converted into, information about the resolution, transmission bitrate, and video quality of the streaming video format that is desired, and a period of time that the video segment should remain available. In one embodiment, an instruction includes a display format of the video segment to be displayed on a destination computer, such as information about the size of the display in pixels or in linear measure such as inches or centimeters, information about what portion of the screen is to be used, such as the location on the screen, or whether the full-screen is to be used, and the like. In one embodiment, the sender A using computer 10 is able to set priorities about which video segments should be processed first by the receiving computer. The form can include a browse button 1340 that allows the user of sender A's computer 10 to browse a drive and its directories/subdirectories or other file storage location to more easily locate a file to be sent. The browse button 1340 also activates a series of computer commands that automatically retrieve and attach the file to be sent to the HTML form.” Liwerant, paragraph [0053] (emphasis added).

Thus, Liwerant relates solely to the preferences of the sender. There is no teaching or suggestion in Liwerant, either in the cited portions or elsewhere, of “multimedia reception capabilities and multimedia reception preferences for at least one recipient,” as recited in the pending claims.

Fukasawa fails to cure this deficiency of Liwerant. The Examiner does not cite Fukasawa as disclosing this feature. Further, a thorough review of the disclosure of Fukasawa by Applicant fails to yield any such disclosure.

Thus, Liwerant and Fukasawa, either alone or in combination, fail to teach or suggest at least the above-noted feature of the pending claims. Since the cited references fail to teach or suggest each feature of the pending claims, the Office Action fails to establish a prima facie case of obviousness.

Therefore, independent claims 1, 11, 12, 13 and 23 are patentable. Further, claims 2-7, 9, 10, 14-16 and 19-22 each depend from one of allowable claims 1, 11, 12 or 13 and are, therefore, patentable for at least that reason, as well as for additional patentable features when those claims are considered as a whole.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 8 June 2009

By /G. Peter Albert, Jr./

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